

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-11586-RWZ

BEN DOE, et al.

v.

BOSTON PUBLIC SCHOOLS

MEMORANDUM OF DECISION

May 21, 2004

ZOBEL, D.J.

Plaintiffs brought suit under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(i)(3)(B), to recover attorneys' fees, costs and expenses incurred in administrative proceedings before the Massachusetts Department of Education, Bureau of Special Education Appeals ("BSEA"). They assert that they are "prevailing" parties. Defendant has moved to dismiss.

Although the parties agreed to telescope the administrative proceedings and to accept an "advisory" opinion, all participants, including the hearing officer, treated the result as an enforceable decision. Indeed, when defendant failed to do its part to effectuate the ruling, the hearing officer enforced it. In addition, the hearing officer determined that plaintiffs "would prevail" as a result of her "advisory" opinion. This case was not settled as was Doe v. Boston Public Schools, 358 F.3d 20 (1st Cir. 2004). Rather, it fits squarely within the standard of Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health and Human Res., 532 U. S. 598 (2001). The parties advocated different schools for plaintiff Ben Doe. The hearing officer resolved the dispute in

plaintiff's favor. Plaintiff thereby gained rights that the hearing officer then vindicated, and the decision materially altered the parties' legal relationship.

The motion to dismiss is accordingly denied.

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE